REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus-

SARANGANI RESOURCES CORPORATION,
Respondent.

CTA EB No. 1098
(CTA Case No. 8105)

Present:

Del Rosario, *PJ*
Castañeda,Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Cotangco-Manalastas, and
Ringpis-Liban, *JJ.*

Promulgated:

OCT 08 2015 2:25 p.m.

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RESOLUTION

COTANGCO-MANALASTAS, J.:

This resolves respondent's Motion for Reconsideration (of Decision dated 28 April 2015)[1], filed on May 28, 2015. Petitioner, despite notice, failed to file her comment.

The Decision[2], dated April 28, 2015, resolved the case as follows:

> "WHEREFORE, premises considered, the instant Petition for Review is hereby GRANTED. The Decision and Resolution of the Special First Division, dated June 28, 2013 and November 8, 2013, respectively, are REVERSED and SET ASIDE. The Petition for Review filed by respondent Sarangani Resources

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[1] *Rollo*, CTA EB Case No. 1098, pp. 159-168.
[2] *Rollo*, pp. 147-158.

> Corporation in CTA Case No. 8105 is DISMISSED for having been filed out of time."[3]

The Court *En Banc* saw the need to review the timeliness of respondent Sarangani Resources Corporation's appeal before the CTA Division. Upon review, the Court *En Banc* found that the respondent erred in counting a fresh 180-day period when it elevated its protest to the Commissioner of Internal Revenue.

In its motion for reconsideration, respondent argues that based on Section 228 of the NIRC, Revenue Regulations (RR) No. 12-99, and *Moog Controls Corporation Philippine Branch v. Commissioner of Internal Revenue*[4] (*Moog* case), it appears that the 180-day period in cases of inaction referred to in Section 228 of the NIRC and RR 12-99 should be counted at the level of the Commissioner and not at the Regional Director.[5] In the alternative, respondent argues that the pronouncement that there is only one "180-day period" should not be given retroactive application as it would result to injustice and substantial inequitable results for those who only relied on the *Moog* case in good faith.[6]

Upon considering respondent's arguments, the Court *En Banc* finds no reason to modify the assailed Decision.

Section 228 provides for only one 60-day period for the taxpayer to submit supporting documents and one 180-day period for the CIR or her authorized representative to decide the protest, thus:

> "Sec. 228. Protesting of Assessment. – When the Commissioner of his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: xxx
>
> xxx
>
> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. <u>Within sixty (60) days from filing of the protest</u>, all

[3] *Rollo*, p. 157.
[4] CTA EB Case No. 44, May 10, 2005.
[5] *Rollo*, p. 164.
[6] *Rollo*, p. 165.

> relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
>
> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of said decision, or from the lapse of one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable."

The implementing rules and regulations as provided in Revenue Regulations No. 12-99, specifically Section 3.1.5 provides the taxpayer with the option to elevate its protest to the Commissioner of Internal Revenue upon receipt of denial of protest by the authorized representative or to directly appeal such denial to the Court of Tax Appeals, both within thirty (30) days from receipt of the denial of the protest.

Section 3.1.5 is silent as to the periods applicable when the taxpayer opts to elevate its protest to the CIR. However, RR 12-99 does clarify the effect of elevating the protest to the CIR, *to wit*:

> "3.1.5 Disputed Assessment. – xxx
>
> xxx
>
> In general, if the protest is denied, in whole or in part, by the Commissioner or his duly authorized representative, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from date of receipt of the said decision, otherwise, the assessment shall become final, executory and demandable: *Provided*, however, that if the taxpayer elevates his protest to the Commissioner within thirty (30) days from date of receipt of the final decision of the Commissioner's duly authorized representative, the latter's decision shall not be considered final, executory and demandable, in which case, the protest shall be decided by the Commissioner."

From the foregoing, it is clear that elevation of the protest to the CIR does not amount to a new protest. It is the same protest filed with the authorized representative, which now has to be decided by the Commissioner. Being the very same protest filed with the authorized representative, upon elevation to the CIR, there is no fresh 60-day period to submit additional documents, nor is there a fresh 180-day period, hence the silence of RR 12-99 on this aspect.

Thus, the Court *En Banc* reiterates its findings that respondent erred in submitting additional documents to the CIR and in counting a new 180-day period from the second submission of additional documents.

Finally, the Court finds respondent's reliance on the *Moog* case is misplaced. The *Moog* case emphasized the nature of the decision of the authorized representative:

> "The Court finds that the above-cited provision of Revenue Regulations No. 12-99 is not inconsistent with Sec. 228 of the NIRC of 1997. On the contrary, it merely implements Sec. 228 by establishing a clear guideline on the nature of a decision rendered by the *authorized representative* of the Commissioner of Internal Revenue on a disputed assessment. The taxpayer is given a choice whether to appeal the decision to the Commissioner of Internal Revenue or to the Court of Tax Appeals. It further provides that the decision of the authorized representative *will not attain finality* if the taxpayer appeals the same to the Commissioner of Internal Revenue who shall then be required to decide the protest himself."

Nowhere in the *Moog* case was it discussed that upon elevation of the protest to the CIR that a fresh 60-day period to submit documents, or a fresh 180-day period to decide the protest is granted to the taxpayer and to the CIR. In the *Moog* case, petitioner therein elevated its protest to the CIR and appealed the denial of its protest to the Court of Tax Appeals on the same day. The CTA dismissed said case considering that there was no decision that could validly be appealed to the CTA.

In the *Moog* case, the discussion of the 180-day period was merely to address Moog's argument that the prematurity of appealing to the CTA even without a decision from the CIR was cured by the lapse of the 180-day period. This argument was dismissed by the Court. It is notable that in the Court's discussion, no mention was made of a new 180-day period being granted to the CIR, when deciding elevated protests from a denial of his authorized representative.

WHEREFORE, the instant motion for reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED.

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

WE CONCUR:

(with concurring opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB NO. 1098** (CTA CASE No. 8105)
	Present:
-versus-	**DEL ROSARIO**, *PJ*, **CASTAÑEDA, JR.**, **BAUTISTA**, **UY**, **CASANOVA**, **FABON-VICTORINO**, **MINDARO-GRULLA**, **COTANGCO-MANALASTAS**, *and* **RINGPIS-LIBAN**, *JJ.*
SARANGANI RESOURCES CORPORATION, *Respondent.*	Promulgated: OCT 08 2015 2:25 p.m.

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CONCURRING OPINION

DEL ROSARIO, PJ.:

I fully concur with the *ponencia* in denying respondent's "Motion for Reconsideration" for lack of merit.

While Revenue Regulations No. 12-99 would seem to allow an elevation of the taxpayer's protest to the Commissioner of Internal Revenue (CIR) of the final decision of the CIR's duly authorized representative, such provision may only be construed in a manner consistent with Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended. As discussed in the *ponencia*, "Section 228 provides for only one 60-day period for the taxpayer to submit supporting documents and one 180-day period for the CIR or her authorized representative to decide the protest."

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It is well-settled that rules and regulations, which are the product of a delegated power to create new and additional legal provisions that have the effect of law, should be within the scope of the statutory authority granted by the legislature to the administrative agency. It is required that the regulation be germane to the objects and purposes of the law; and that it be not in contradiction to, but in conformity with, the standards prescribed by law.[1]

ROMAN G. DEL ROSARIO
Presiding Justice

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[1] *Commissioner of Customs and the District Collector of the Port of Subic vs. Hypermix Feeds Corporation,* G.R. No. 179579, February 1, 2012.